

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

v.

**DAVID SCHOTTENSTEIN,
KRIS BORTNOVSKY,
RYAN SHAPIRO,
SAKAL CAPITAL MANAGEMENT, LLC, and
SAKAL U.S. FUND, LLC,**

Defendants.

Civil Action No. 22-cv-10023-PBS

PLAINTIFF'S STATUS REPORT

Plaintiff United States Securities and Exchange Commission (the "Commission") hereby provides the following update:

- On January 6, 2022, the Commission filed a complaint against David Schottenstein ("Schottenstein"), Kris Bortnovsky ("Bortnovsky"), Ryan Shapiro ("Shapiro"), Sakal Capital Management, LLC ("Sakal Capital"), and Sakal U.S. Fund, LLC ("Sakal Fund") (collectively, the "Defendants") alleging insider trading in one or more securities. Dkt. No. 1.
- Also on January 6, 2022, the United States Attorney's Office for the District of Massachusetts ("USAO") indicted Bortnovsky and Shapiro on one count of conspiracy to commit securities fraud and one count of securities fraud. *U.S. v. Bortnovsky and Shapiro*, Case No. 1:22-cr-10006 (Jan. 6, 2022), Dkt. No. 19. The USAO simultaneously announced that it had charged Schottenstein by an information with conspiracy to commit securities fraud and that he had agreed to plead guilty. *See U.S. v. Schottenstein*, Case No. 1:22-cr-10005 (Jan. 6, 2022), Dkt. Nos. 1, 2. The USAO actions are based on the same facts at issue in the Commission's case.
- On February 22, 2022, the USAO moved to partially stay the Commission's action on the grounds that a stay would not unduly prejudice the parties and was necessary to protect the integrity of the criminal discovery process and for efficiency sake. Dkt. No. 24. On February 23, 2022, the request for a stay was granted. Dkt. No. 25. The Commission took no position on USAO's motion for a stay at that time. *See* Dkt. No. 24.

- On or around November 29, 2022, Schottenstein withdrew from his cooperation agreement with the USAO. *See Schottenstein*, at Dkt. No. 57.
- On or around December 5, 2022, the USAO dismissed the indictment against Bortnovsky and Shapiro without prejudice. *Bortnovsky*, at Dkt. Nos. 88, 91. The USAO has publicly stated that their investigation into Bortvosky and Shapiro is active and ongoing.
- On or around March 21, 2023, Schottenstein was sentenced to one year and one day in prison, five years of supervised release, and ordered to forfeit \$634,893 in trading profits. *Schottenstein*, at Dkt. No. 81.

As a result of the above, there no longer are criminal charges pending against any of the defendants in this action. However, the USAO has advised the Commission that it would object if the Commission moves to lift the stay at this juncture on the grounds that the USAO's investigation into Bortnovsky and Shapiro is continuing and, consequently, the original bases for the entry of the stay still apply.

The Commission will submit a follow-up status report by August 10, 2023 or once the USAO's investigation has concluded, whichever comes first.

Dated: May 5, 2023

Respectfully submitted,

SECURITIES AND EXCHANGE COMMISSION
By its attorneys,

/s/ Susan Cooke Anderson
Susan Anderson (DC Bar No. 978173)
SECURITIES AND EXCHANGE COMMISSION
Boston Regional Office
33 Arch St., 24th Floor
Boston, MA 02110
(617) 573-4538 (Anderson direct)
Fax: (617) 573-4590 (fax)
andersonsu@sec.gov

Certificate of Service

I hereby certify that, on May 5, 2023, a true and correct copy of the foregoing document was filed through the Court's CM/ECF system, and accordingly, the document will be sent electronically to all participants registered to receive electronic notice in this case.

/s/ Susan Cooke Anderson

Susan Cooke Anderson